

REMARKS/ARGUMENTS

In the communication mailed April 3, 2003, the Examiner has rejected claims 1 through 4 under 35 U.S.C. §112 and 35 U.S.C. §103. Additionally, the Examiner has objected to claims 5 – 16 as being in improper form.

Upon entry of the instant amendment, all such claims will be cancelled. New claims 17 through 36 will be presented. It is respectfully submitted that such newly presented claims comply fully with Section 112.

The Examiner rejected prior claims 1 through 4 under Section 103 as being obvious over Kielley. Kielley discloses a nasal composition comprising oxymetazoline chloride, sorbitol, buffer and a preservative, all in aqueous solution. Kielley does not disclose oligodynamically active metal or metal ions. The Examiner has also cited the Merck Index for disclosing oxymetazoline and xylometazoline in aqueous solution with an alcohol. Again, there is no disclosure of an oligodynamically active metal or metal ions. The inventor has discovered that the use of such metal or metal ions with an oxymetazoline hydrochloride or xylometazoline hydrochloride formulation with sorbitol or glycerol or both will eliminate the need for any preservative. This is not obvious from the teachings of Kielley, the Merck Index or both references combined. New claims 17 through 36 are specifically directed at this discovery.

Application No. 09/337,789
Amdt dated August 28, 2003
Reply to Office action of April 3, 2003

In view of the foregoing, it is respectfully submitted that the subject application is in condition for allowance and such favorable action at an early date is earnestly solicited.

Respectfully submitted,



Mary-Ellen M. Devlin
Attorney for Applicant(s)
Reg. No. 27,928

Patent Department
Boehringer Ingelheim Corp.
900 Ridgebury Road
P.O. Box 368
Ridgefield, CT. 06877
Tel.: (203) 798-4866
August 28, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on August 28, 2003.



By: Mary-Ellen M. Devlin
Reg. No. 27,928